

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

STATE OF TENNESSEE, et al.,)
)
)
Plaintiffs,) Civil Action No. 3:25-cv-00025
) Judge Katherine A. Crytzer
v.) Magistrate Judge Jill E. McCook
U.S. DEPARTMENT OF HEALTH AND)
HUMAN SERVICES, et al.)
)
Defendants.)
)

**PLAINTIFF STATES' NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT
AND PRELIMINARY RELIEF**

The Plaintiff States respectfully notify the Court of recent authority that supports their pending motion for summary judgment and preliminary relief from the U.S. Department of Health and Human Services' ("HHS") *HIPAA Privacy Rule to Support Reproductive Health Care Privacy*, 89 Fed. Reg. 32,976 (Apr. 26, 2024) ("Final Rule").

In *Purl v. HHS*, enclosed as **Exhibit A**, the court vacated the Final Rule because HHS lacks statutory authority to impose its reproductive-healthcare-related disclosure requirements, which unlawfully "limit" state "public health investigation[s] [and] intervention[s]." No. 2:24-cv-228-Z, 2025 WL 1708137, *10-18, 22-27 (N.D. Tex. June 18, 2025) (quoting 42 U.S.C. § 1320d-7(b)). Focusing on the Final Rule's adverse impacts on reporting and investigating child abuse, the court held that the rule's burdens on both covered healthcare entities and investigators violated statutory limits on HHS's rulemaking authority. *See id.* at *13-18. For example, "[t]he attestation requirement imposes bureaucratic barricades to States exercising their lawful public health investigation powers," while also imposing a "weighty burden" on covered entities evaluating whether the attestation complies with the

rule. *Id.* at *16; *see* States' MSJ Br. 12-20, ECF No. 26 (Feb. 7, 2025). Such "limit[s]" on state child-abuse interventions violate 42 U.S.C. § 1320d-7(b). *See Purl*, 2025 WL 1708137, at *10-18.

In granting vacatur, the court also rejected many of the arguments HHS has advanced in opposition to the Plaintiff States' pending motion. First, the court reaffirmed that "being the mere object of a regulation typically grants standing because the regulation 'require[s] or forbid[s] *some action* by the plaintiff.'" *Id.* at *7 (emphasis and alterations in original) (citation omitted); *see* States' MSJ Reply 4-6, ECF No. 88 (Apr. 3, 2025). The court also held that the plaintiff had established compliance-cost standing without having to "meet a certain cost threshold," "testify exactly what they base[d] their estimates on," or "account[] [for] the costs 'directly attributable to the Rule.'" *Purl*, 2025 WL 1708137, at *9-10; *see* States MSJ Reply 7-8. After all, "HHS expressly states" the Final Rule imposes costs. *Purl*, 2025 WL 1708137, at *10. Finally, the court explained that vacatur is the appropriate remedy, rejecting the same arguments HHS raises here to avoid that default relief. *Purl*, 2025 WL 1708137, at *28-29; *see* States MSJ Reply 13-18.

The court also made clear that its vacatur of the Final Rule should "not necessarily prevent review" elsewhere, as "[c]ourts can and do continue to review agency action despite another court's vacatur." *Id.* at *28; *see* States' MSJ Reply 15-16. As the U.S. Department of Justice has recently explained, a case "remains a live controversy" notwithstanding a vacatur order until either "(1) the ... judgment is affirmed on appeal and no further appellate review is available, or (2) the deadline to appeal passes without Defendants noticing an appeal." Joint Status Report, ECF No. 85, *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, No. 4:24-cv-461-O (N.D. Tex. Feb. 17, 2025). Until the prospect of appellate reversal disappears, *see* Notice of Interlocutory Appeal, ECF No. 109, *Purl v. HHS*, No. 2:24-cv-228 (N.D. Tex. June 13, 2025) (appealing denial of motion to intervene), the Plaintiff States' claims remain live and ready for this Court to resolve.

Date: June 24, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

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